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9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE SOUTHERN DISTRICT OF NEW YORK**  
11

Frank Liu  Plaintiff,  vs.  The Nielsen Company (US) LLC  and TNC US HOLDINGS  Defendants.	<b>Case #1:22-cv-09084-JHR-OTW</b>  <b>Plaintiff's Response in Opposition to Defendants' Motion to Dismiss (ECF 54)</b>  <b><u>***TELEPHONE OR ZOOM HEARING REQUESTED FOR ORAL ARGUMENTS***</u></b>
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18 **\*\*\*PLAINTIFF REQUESTS TELEPHONE OR ZOOM HEARING FOR ORAL**  
19 **ARGUMENTS. THE COURT CAN SET THE DATE AND TIME. THANK YOU.\*\*\***

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**MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS****INTRODUCTION**

Plaintiff asserts his lawsuit is not time-barred due to equitable tolling, estoppel, promissory estoppel, and COVID-19 extensions as outlined in this brief and Plaintiff's Amended Complaint. Plaintiff believes Defendants motion to dismiss is untimely filed and they have waived their defenses of time barred as it was filed over 7 months after Plaintiff's Amended Complaint. Furthermore, in the event the Court decides that the lawsuit is time-barred in SDNY, Liu asks the Court to instead transfer the lawsuit to District of Connecticut where venue is more proper. The District of Connecticut has special savings law that would save Liu's lawsuit. Furthermore, Plaintiff asks the Court for telephonic or zoom oral arguments for Defendants' motion to dismiss. This response to Defendants motion to dismiss was rushed. This response is focused mainly on showing the Court why Plaintiff's lawsuit is not time-barred and should be allowed to proceed. For matters not associated with the time barred argument, Plaintiff asks the Court to grant him leave to amend his complaint to cure any defects outside of Defendants' argument of time barred or allow Plaintiff to amend his response to Defendants' motion to dismiss, or make those arguments during oral arguments. Plaintiff was physically attacked last week in a parking lot. Plaintiff has been unable to focus on his motion to dismiss response due to the attack. Plaintiff has been rushing to finish this brief to get it in on time because the Court has not yet ruled on the motion to extend time at the time of submitting this brief and this response is due on March 29, 2024.

**EQUITABLE TOLLING, ESTOPPEL AND PROMISSORY ESTOPPEL**

This Court has the power to grant equitable tolling for Liu's lawsuit, and Plaintiff believes the circumstances of this lawsuit satisfy the three requirements of a) timely notice to Defendants, b) a lack of prejudice to the Defendants, and c) reasonable and good faith conduct on the part of Plaintiff.

1 Firstly, Plaintiff sued Defendants within the 90 day right to sue letter in the Northern  
2 District of California under case number 4:21-cv-07313-JSW. Plaintiff believed his lawsuit  
3 was brought in the correct forum because he also experienced discrimination in the  
4 Northern District of California when he was sent by Nielsen to work in the San Francisco  
5 Local People Meter Market.

6 Liu filed his EEOC complaint within 180 days of the last instance of illegal act by  
7 Nielsen (Liu's termination in retaliation for contacting Nielsen Human Resources and  
8 Nielsen CEO David Kenny about discrimination at Nielsen). Liu was terminated in April of  
9 2019 and Liu's EEOC complaint was filed on September 25, 2019 while Liu was in China.  
10 Liu was terminated while he was in the US, but left the US shortly after his termination at  
11 Nielsen and the EEOC was aware of the trouble Liu had getting the EEOC phone interview  
12 due to China's blocking of Google services. Liu tried to get a phone interview from the  
13 New York Field Office but during the scheduled phone interview, Liu's phone did not ring.  
14 Liu ended up scheduling the phone interview with the EEOC Tampa Field Office. Tampa  
15 Field Office spoke about transferring Liu's EEOC complaint to the New York Field Office,  
16 but Cathy Beveridge who Nielsen hired to oversee the EEOC process lied to the Tampa  
17 Field Office saying the EEOC complaint should stay in the Tampa Field Office because  
18 Liu's employment records were stored in Oldamar Florida thus preventing Liu's EEOC case  
19 from transferring over.

20 Liu's EEOC complaint was filed within 180 days of Liu's retaliatory termination. It  
21 would have been filed sooner had there not been technical difficulties. The EEOC issued  
22 the 90 day right to sue letter to Plaintiff electronically on June 25, 2021 even though the  
23 EEOC knew Plaintiff was still abroad. Despite the EEOC electronically issuing the right to  
24 sue letter when Liu was still abroad, Liu returned to the US on or around September 7, 2021  
25 and was able to file his lawsuit in the Northern District of California on September 20, 2021  
26 which was 87 days from the issuance of the EEOC's 90 day right to sue letter.

27 Liu's lawsuit was dismissed without prejudice on September 23, 2022 due to lack of  
28 personal jurisdiction. Senior District Judge Jeffrey S. White recommended that the lawsuit

1 could be refiled in SDNY as per page 6 of docket 55 of his “Order Granting Motion to  
2 Dismiss.” Here is a screenshot of the order:

24 action. However, the Court DISMISSES this action without prejudice to Plaintiff filing suit in  
25 another venue. The Court suggests that the Southern District of New York or the District of New  
26 Jersey may be the proper venue for Plaintiff's claims regarding his termination of employment.

6 On October 22, 2022, which was within 30 days of the termination of the Northern  
7 California action, Plaintiff refiled his lawsuit in the Southern District of New York.  
8 Defendants. Between the time Liu's lawsuit filed in N.D. California was dismissed and it  
9 was refiled in SDNY, Defendants conducted actions that consisted of estoppel and  
10 promissory estoppel to prevent Liu from appealing the dismissal because Liu wanted the  
11 Court to transfer the case to SDNY instead of dismissal. The Northern District of California  
12 had the authority to transfer Liu's lawsuit to SDNY.

Defendants pretended to offer the equivalent of 6 months of Liu's pay (with the exact amount not being disclosed in this filing) but Defendants came back with three different drafts and tried to force Liu into confidentiality. Some of Defendants' actions can be seen in Docket 5 and 5.1, but Defendants' actions went beyond estoppel and promissory estoppel because they kept wanting to amend the terms to make it worse and worse for Plaintiff and then adding per-conditions like deleting YouTube videos outlining discrimination while knowing full well they were violating NY GOL Section 5-336 because employers can not require confidentiality for settlement agreements when it came to discrimination cases.

On October 22, 2022 because Cardelle Spangler told Liu they were going to send over another draft of the settlement agreement once the clients approved, Liu waited for it, However, Spangler refused to send it over early so Liu could see what the new terms Defendants were going to add to it was. Due to Spangler's intentional delay in keeping Liu in the dark about what new conditions Defendants wanted, Liu was forced to refile his lawsuit by email to the SDNY Court because Liu calculated that day as the 30<sup>th</sup> day since the lawsuit was dismissed in the Northern District of California and wanted to ensure it was

1 refiled. Liu discovered on that day the SDNY court had a pro se email address for filing.  
2 Had Liu not discovered it on that day, Liu would not have been able to refile it in time.

3       However, Defendants actions of sending different drafts with more restrictive  
4 provisions and straining Liu along estopped Liu from appealing the dismissal to the Ninth  
5 Circuit. Before engaging in discussions about settlement, Defendants knew Liu wanted to  
6 appeal to the Ninth Circuit. Spangler wouldn't even speak to Liu on the phone about  
7 settlement and kept revising the drafts on Liu. Liu believes Defendants either never wanted  
8 to go through with the settlement amount, or the various drafts and refusing to speak to Liu  
9 on the phone was intentionally sabotaging the settlement to force Liu not to settle because  
10 they knew Liu couldn't accept forced confidentiality. Defendants waited until there was no  
11 possibility of appealing to the Ninth Circuit by running out the 30 days for appeal in order  
12 to finally send Liu the latest version of the settlement agreement after the post office was  
13 already closed so there was no possibility Liu could have sent in an appeal by mail to the  
14 Ninth Circuit.

15       Defendants actions estopped Liu from appealing the dismissal to the Ninth Circuit  
16 even though they knew Liu wanted to appeal it. Defendants did not want Liu appealing to  
17 the Ninth Circuit so engaged in pretend settlement negotiations. They didn't follow the  
18 rules of NY GOL 5-336 at all and gave Liu a few days to consider their last offer before it  
19 expired. They kept making the terms worse and worse and even wanted Liu to sign an  
20 affidavit requiring Liu to sign the affidavit in a city Liu was not located in. During this  
21 back and forth, Liu was homeless living in his car and Defendants' tactics took a toll on  
22 Plaintiff's mental health. There are many emails back and forth between Spangler and Liu  
23 and it is Liu's understanding he can't share it. On a meet and confer call with Defendants  
24 attorney Caitlin McCaan she advised Liu that the sealing of Docket 5 and 5.1 meant that  
25 Liu could not argue estoppel and promissory estoppel at all because the Court made its  
26 decision already. Liu disagrees with Caitlin McCaan's assertion, so is arguing estoppel and  
27 promissory estoppel without revealing exact details of the sum offered by Defendants.

1 On October 28, 2022, Defendants' attorney Cardelle Spangler wrote Liu an email  
2 stating that Defendants knew about Liu's lawsuit. Because the email is labeled as  
3 "Confidential Rule 408 Communication," and since Liu is not a lawyer, and the Court  
4 previously sealed Docket 5 and 5.1, and based on what McCaan told Liu on a confer call,  
5 Liu is erring on the safe side by not including its contents to show the Court. However,  
6 Plaintiff believes it is undisputed that Defendants knew about the refiled lawsuit on October  
7 27, 2022 or earlier. Although Defendants refused to provide Liu with the correct address  
8 for service which delayed having Defendants served and resulting in Liu needing to write a  
9 letter to Judge Linman so the SDNY Court could reissue the summons, Defendants were  
10 eventually properly served and enjoined to the lawsuit.

11 Plaintiff believes he has satisfied "timely notice to Defendants" for equitable tolling  
12 to occur. Liu has diligently been perusing his claims against Defendants throughout the  
13 EEOC process that took over 1.5 years, and when the lawsuit was filed in good faith in the  
14 Northern District of California and when the lawsuit has been pending with the Southern  
15 District of New York. There will be no prejudice to Defendants if the Court were to grant  
16 equitable tolling because Plaintiff never slept on his rights. He has been perusing his claims  
17 for years.

18 Defendants can not show there is prejudice to Defendants if the Court allows  
19 equitable tolling of Plaintiff's lawsuit. Plaintiff's lawsuit in Northern District of California  
20 and Southern District of New York have been filed in good faith. Plaintiff even made good  
21 faith efforts to resolve the claims. As an example, Plaintiff reached out to Defendants and  
22 would have agreed to settle for just 34.31% of the promissory estoppel amount contained in  
23 Docket 5.1 (exact amount not disclosed in this filing) and would have given Defendants a  
24 release of all claims and stipulation of dismissal with prejudice and to never file a lawsuit  
25 against Defendants again, but Plaintiff was unable to agree to be silenced about what  
26 happened at Nielsen because Plaintiff believes in the first amendment and NY GOL 5-336  
27 prevents Defendants from forcing confidentiality on Plaintiff. There have never been any  
28 offers from Defendants that did not have forced confidentiality provisions and to silence

1 Plaintiff from speaking out about the discrimination he experienced which is in violation of  
2 NY GOL 5-336.

3 Defendants tried to estopp Plaintiff through their settlement negotiations that was  
4 meant to estop prevent Plaintiff from appealing the dismissal to the Ninth Circuit.  
5 Defendants' conduct violated NY GOL 5-336 and their goal was to run out the appeal time.  
6 In fact, after Defendants found out Liu refiled his lawsuit, Cardelle Spangler demanded  
7 Plaintiff file a notice of dismissal right away. Usually stipulated dismissals are filed after a  
8 sum of money has been paid, but Spangler wanted the refiled lawsuit dismissed first. If Liu  
9 followed Spangler's command of dismissing the SDNY action, Spangler would most likely  
10 had come back with more revisions and more demands because she had sent Liu 3 different  
11 drafts even though she knew Liu did not want to be silenced.

12 Spangler kept changing the terms over and over and adding more violations to NY  
13 GOL 5-336. Plaintiff had no choice but to refile his lawsuit on October 22, 2022 because  
14 Plaintiff believed he needed to refile it within 30 days of dismissal of the ND California  
15 lawsuit. By the time Liu realized what was going on and how Defendants were purposely  
16 sabotaging the negotiations by adding new demands for confidentiality and intentionally  
17 running out the clock with their delays and new drafts while refusing to speak to Plaintiff on  
18 the phone, it was too late to appeal the dismissal to the Ninth Circuit. Defendants' actions  
19 succeed in estopping Liu from appealing the dismissal instead of transfer to the Ninth  
20 Circuit. Plaintiff discovered that Defendants was purposely running out the clock, and  
21 there was no chance they would pay Plaintiff the sum of money because they were  
22 demanding things Plaintiff could not do. Defendants wanted Liu to delete everything online  
23 knowing full well, some things can't be deleted online due to not having access.

## 24 25 **CASE LAW**

26 In Scott v. Gino Morena Enterprises, LLC, the US Court of Appeals for the Ninth Circuit  
27 noted that there are two limitations periods for Title VII claims:

1           1) a claimant must exhaust administrative remedies by filing a charge with the  
 2           EEOC or an equivalent state agency within 180 days after the allegedly  
 3           unlawful employment practice occurred, and receiving a right-to-sue letter (42  
 4           U.S.C. § 2000e-5(e)(1); *Jasch v. Potter*, 302 F.3d 1092, 1094 (9th Cir. 2002));  
 5           and  
 6           2) after exhausting administrative remedies, a claimant has 90 days to file a  
 7           civil action (42 U.S.C. § 2000e-5(f)(1)).

8   Plaintiff has satisfied both of these requirements. Defendants are not contesting, nor has  
 9   ever contested Liu's N.D. California lawsuit was untimely filed. Defendants simply  
 10   motioned to dismiss the N.D. California lawsuit based on general jurisdictional grounds.

11       In *Fort Bend County, Texas v. Davis*, the United States Supreme Court made it clear  
 12   the TITLE 7 statute of limitations are based on procedural grounds and are not  
 13   jurisdictional. Therefore, since Liu has satisfied the procedural hurdle of filing with the  
 14   EEOC within 180 days of the last instance of discrimination, retaliation, etc. and filing a  
 15   lawsuit within 90 days of the EEOC right to sue letter, Liu is within statute even though he  
 16   had to refile his lawsuit in the Southern District of New York within 30 days of the N.D.  
 17   California lawsuit being dismissed without prejudice.

#### 19       **Defendants Tricked the EEOC from Transferring Liu's EEOC Complaint to NY**

20       While Liu would have preferred the EEOC complaint filed in the Middle District of  
 21   Florida be transferred to the New York District Office, the Tampa Field Office refused  
 22   based on believing that Liu's employment files were stored in Oldsmar, Florida. It was later  
 23   discovered after Liu filed his lawsuit in N.D. California that Nielsen's attorney Cathy  
 24   Beveridge misrepresented where Liu's employment files were located because they were  
 25   actually stored electronically in The Netherlands. However, the EEOC blocked the transfer  
 26   to the New York District Office because of Cathy Beveridge told them Liu's employment  
 27   files were stored in Oldsmar Florida.

When a EEOC Complaint is filed in the New York office, it is cross-filed with the New York Department of Human Rights. Plaintiff also filed a complaint with the EEOC New York field office, but they dismissed Plaintiff's Complaint because it was already pending with the Florida EEOC because you can't have the same EEOC case open. Plaintiff was unable to have the EEOC transferred to New York Field Office because Nielsen's attorney Cathy Beveridge lied to the EEOC stating Liu's employment records were stored in the Tampa Field Office Jurisdiction when it was untrue.

Before the EEOC issued the right to sue letter, Liu spoke to an EEOC investigator who informed him that he could file his lawsuit in any federal court. Liu also informed the investigator that he was still abroad, but the EEOC investigator told Liu they were going to issue the Right to Sue letter electronically to Liu even though he was still abroad.

Furthermore, The EEOC website states, "You may file a charge of employment discrimination at the EEOC office closest to where you live, or at any one of the EEOC's 53 field offices. Your charge, however, may be investigated at the EEOC office closest to where the discrimination occurred." Source: <https://www.eeoc.gov/how-file-charge-employment-discrimination> Liu was discriminated upon when he was sent to work in the NY LPM. Due to Cathy Beveridge's lie of where Liu's employment records were located, the Tampa Field Office kept Liu's EEOC complaint and refused to transfer it to the New York District Office.

Furthermore, according to the EEOC website, "Once you receive a Notice of Right to Sue, you must file your lawsuit within 90 days. This deadline is set by law. If you don't file in time, you may be prevented from going forward with your lawsuit." The EEOC's website does not clarify on which court to file a lawsuit in. Liu spoke to EEOC investigator back in 2022 and was told that he could file it in any federal court.

## **You Have 90 Days to File A Lawsuit in Court**

Once you receive a Notice of Right to Sue, you must file your lawsuit within 90 days. This deadline is set by law. If you don't file in time, you may be prevented from going forward with your lawsuit.

Liu believed because he was sent twice to work in the Northern District of California (SFO LPM TV Ratings market) during his tenure at Nielsen, and he experienced discrimination in the SFO LPM TV Ratings market, that he could file his lawsuit in the US District Court for the Northern District of California. Liu filed his original lawsuit in the N.D. California in good faith because he believed N.D. California did have personal jurisdiction.

The Title 7 and the EEOC procedural rules are not jurisdictional and are procedural only. Liu has satisfied their procedural hurdles,

### **Instead of Dismissal The Court Should Transfer the Lawsuit to District of Connecticut**

28 U.S. Code § 1406(a) states “The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.” Defendants’ actions contained in Docket 5 and 5.1 qualified as estoppel and promissory estoppel preventing Plaintiff from appealing the dismissal without prejudice to the Ninth Circuit. Had Defendants not have estopped Liu, he would have appealed the dismissal to the Ninth Circuit and argued that the N.D. California Court should have transferred his lawsuit to SDNY instead of dismissal as allowed by 28 USC 1406(a).

Based on equitable tolling and Defendants’ bad faith actions, Plaintiff believes that the SDNY Court should not dismiss Liu’s lawsuit based on statute of limitations. However, if the SDNY Court rules against Plaintiff, Plaintiff asks the Court to **instead** transfer the lawsuit to the District of Connecticut because the lawsuit would not be time-barred there and venue would be more proper there based on Title VII’s special venue provisions.

(1) in any federal district court in the state in which the unlawful employment practice is alleged to have been committed, (2) "in the judicial district in which the employment records relevant to such practice are maintained and administered," or (3) "in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice. And finally (4) if the employer "is not found" in any of the

1 districts identified in the first three provisions, venue will lie "within the judicial district in  
2 which the respondent has his principal office.

3 Plaintiff was sent to work for the NY LPM market which includes parts of NY, NJ  
4 and parts of CT. Plaintiff remembers driving to CT to work on recheck refusal homes  
5 where plaintiff would try to recruit homes that previously refused Nielsen. Nielsen's  
6 unlawful discrimination took place when Plaintiff was working in the NY LPM market, and  
7 the market includes CT as well.

8 The person who terminated Liu was Shannon Buggy and Plaintiff believes she  
9 worked for Nielsen in Connecticut. Shannon Buggy terminated Liu over the phone and she  
10 was most likely in Connecticut when she terminated Liu. That would be the only  
11 explanation of why Liu's 2019 W-2 listed CT as Nielsen's address.

Employee Reference Copy			
<b>W-2</b>		<b>Wage and Tax Statement</b>	
Copy C for employee's records.		OMB No. 1545-0008	
d Control number	Dept.	Corp.	Employer use only
0000043760 V85		1NCU	C S 4549
c Employer's name, address, and ZIP code			
THE NIELSEN COMPANY US LLC 40 DANBURY ROAD WILTON, CT 06897			
e/f Employee's name, address, and ZIP code			
FRANK L LIU			

18 Prior to 2019, Liu's W-2 for 2016, 2017 and  
19 2018 all listed a New York address for Nielsen.

Employee Reference Copy			
<b>W-2</b>		<b>Wage and Tax Statement</b>	
Copy C for employee's records.		OMB No. 1545-0008	
d Control number	Dept.	Corp.	Employer use only
0000043760 V85		1NCU	C S 5190
c Employer's name, address, and ZIP code			
THE NIELSEN COMPANY US LLC 770 BROADWAY NEW YORK, NY 10003-5523			

21 Furthermore, the *2011 Connecticut Code - Title 52 Civil Actions - Chapter 926*  
22 *Statute of Limitations - Sec. 52-592. Accidental failure of suit; allowance of new action*  
23 allows Plaintiff's lawsuit to still be within the statute of limitations because Plaintiff's first  
24 lawsuit filed in N.D. California was on time. Plaintiff believed his original lawsuit filed in

N.D. was proper and the Northern District of California did have personal jurisdiction over Defendants because Liu was previously sent to the SFO LPM and discrimination did occur there too. Even though Liu's lawsuit was dismissed for lack of personal jurisdiction, the Connecticut savings law allows lawsuits to be re-brought in the District of Connecticut if the original lawsuit was "dismissed for want of jurisdiction." Therefore, if the SDNY Court transfer Liu's lawsuit to the District of Connecticut (instead of dismissing Liu's lawsuit), then Liu's lawsuit would be saved from being outside the statute of limitations.

The Connecticut statute can be read here:

<https://law.justia.com/codes/connecticut/2011/title52/chap926/Sec52-592.html>

The right-to-sue letter issued by the EEOC grants the charging party the right to file a lawsuit in federal court within 90 days. The letter does not specify the particular court where the lawsuit must be filed. Therefore, if the lawsuit is initially filed in the wrong court but within the 90-day period, the plaintiff could still refile the lawsuit in the correct court.

### **EEOC's Procedures Were Followed**

According to 42 U.S.C. 2000e-5(f)(1), once the EEOC issues the right-to-sue notice, the charging party may file a civil action against the employer within 90 days. Title 7's EEOC procedures in addition to 42 U.S.C. 2000e-5(f)(1) is non-jurisdictional. Here, Liu did file a lawsuit within 90 days of the right to sue letter. He filed it in the US District Court for the Northern District of California which has subject matter jurisdiction. However, the N.D. California court found that it did not have personal jurisdiction. The 90 day right to sue is a procedural doctrine. Plaintiff followed the procedure, and after dismissal, within 30 days, he refiled it in S.D.N.Y.

### **MORE BACKGROUND INFO**

Plaintiff's lawsuit is NOT time barred. Plaintiff's EEOC complaint officially was filed on September 25, 2019. Plaintiff left the US shortly after being terminated from

1 Nielsen. It took months for Plaintiff to successfully get an EEOC interview scheduled  
2 because gmail and google voice is blocked in mainland China and Liu needed a working  
3 VPN for Google services to work. Liu was in China because he no longer wanted to be in  
4 the US after what happened at Nielsen. In China, Liu became an English teacher.

5 However, despite the technical issues (China's firewall), Liu's EEOC complaint was  
6 filed within the statutory 180 days of the last instance of Nielsen's unlawful acts which  
7 was Liu's termination in April of 2019. The EEOC had the complaint from September 25,  
8 2019 (official date of filing) to June 25, 2021 (when the EEOC issued the 90 day right to  
9 sue letter). This means the EEOC had Liu's case for 639 days or 1.75 years. Despite the  
10 EEOC electronically issuing the right to letter when Liu was still abroad, Liu returned to the  
11 US on or around September 7, 2021 and was able to file his lawsuit in the Northern District  
12 of California on September 20, 2021 which was 87 days from the issuance of the EEOC's  
13 90 day right to sue letter. The US Marshal properly served Defendants and the lawsuit  
14 lasted until September 23, 2022 when it was dismissed without prejudice for lack of  
15 personal jurisdiction. The lawsuit was refiled in the Southern District of New York on  
16 October 22, 2022 which is within 30 days of the dismissal in Northern District of  
17 California. There is no question Liu diligently pursued his claims. Liu never abandoned  
18 his claims and Liu believes equitable tolling applies. Furthermore, Defendants' actions  
19 after the lawsuit was dismissed in Northern District of California qualifies as estoppel and  
20 promissory estoppel to prevent Liu from appealing the dismissal without prejudice to the  
21 Ninth Circuit Court of Appeals because Liu believed Judge White should have transferred  
22 his lawsuit instead of dismissal as allowed under **28 USC § 1404(a)**. Nielsen's actions of  
23 estoppel and promissory estoppel which is parts are contained in Docket 5 and 5.1  
24 prevented Liu from appealing it to the Ninth Circuit within 30 days of dismissal. However,  
25 Liu was able to find a pro se email address to submit his lawsuit to on October 22, 2022 so  
26 that was what he did when he realized Defendants were messing with him and Spangler was  
27 intentionally sabotaging the settlement by adding new terms at the very last minute to run  
28 out the clock so Liu could not appeal.

## Purpose of Statute of Limitations

The purpose of the statute of limitations is to prevent a plaintiffs from sleeping on their rights. Liu did no such thing and has diligently and zealously perused his claim even to the point of sacrificing his livelihood to peruse justice. Liu became homeless for over a year because he was fighting for his rights. Highly paid lawyers do not understand how hard it is to be homeless and what racism and discrimination can do to someone's mental and physical health. There are times Liu's feet were so cold that he could barely feel them. There were times Liu felt hopeless. But he forged forward on the hopes that one day there will be justice for what happened.

A plaintiff seeking the benefit of equitable tolling must show three elements: "timely notice, and lack of prejudice, to the defendant, and reasonable and good faith conduct on the part of the plaintiff." (McDonald, supra, 45 Cal.4th at p. 102.) Nielsen has been involved and also given notice of the EEOC filing, first lawsuit and refiled lawsuit. There is no doubt that Nielsen was provided timely notice of all court actions. Nielsen even discovered Liu's S.D.N.Y. lawsuit days after he filed it. Plaintiff has pursued his lawsuit in good faith. He has never abandoned his claims.

## EQUITABLE TOLLING CASE LAW

In Johnson v. Henderson (9th Cir. 1997), it was decided that equitable tolling could apply to Title VII actions in certain circumstances. The court held that equitable tolling could be appropriate if a plaintiff was prevented from filing a timely lawsuit due to actions by the defendant that had misled or deceived the plaintiff.

Roth v. United Airlines, Inc. (7th Cir. 2002): In this Seventh Circuit case, the court addressed the application of equitable tolling to Title VII claims. The court held that equitable tolling could apply if the defendant's conduct actively misled the plaintiff regarding his or her rights.

Zerilli-Edelglass v. New York City Transit Authority (2nd Cir. 1999): In this case, the Second Circuit discussed the application of equitable tolling in Title VII cases. The court

held that equitable tolling could apply if the defendant's conduct amounted to active deception, which prevented the plaintiff from filing a timely lawsuit.

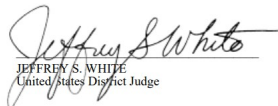
### FORT BEND ANALYSIS

In *Fort Bend County, Texas v. Davis*, the United States Supreme Court held that while an employee has a mandatory obligation to file a charge with the EEOC prior to bringing a discrimination suit under Title VII, such obligation is a procedural, rather than a jurisdictional requirement. Based on the Supreme Court's ruling that it is procedural only, Plaintiff did file a federal lawsuit within 90 days of the EEOC right to sue letter. The original lawsuit was filed in the Northern District of California under case no. 4:21-cv-07313-JSW. The lawsuit was dismissed without prejudice and Judge White recommended it be refiled in SDNY. Even though Defendants' actions constituted estoppel and promissory estoppel and prevented Plaintiff from appealing the dismissal to the Ninth Circuit (because Plaintiff believed the Court should have transferred his lawsuit instead of dismissing it), Plaintiff was able to refile the lawsuit in SDNY within 30 days of dismissal. Plaintiff believes he did satisfy the EEOC and TITLE VII's procedural obligations.

### Defendants Gamed the System in Liu's First Lawsuit

For the N.D. California lawsuit, Defendants never contested statute of limitations. They filed their first motion to dismiss (ECF 18) on Jan. 4, 2022 based on improper venue.

Plaintiff's response to Defendants' Motion to Dismiss (ECF 18) was due by Jan. 28, 2022. However, just one day before Plaintiff's response was due, Defendants filed their First Amended Motion to Dismiss (ECF 24) to add a new reason for dismissal based on personal jurisdiction. Defendants' waited to add the new reason to dismiss, and by filing their amended motion to dismiss, just one day before Plaintiff's

7	FRANK LIU,	Case No. <a href="#">21-cv-07313-JSW</a>
8	Plaintiff,	
9	v.	
10	TNC US HOLDINGS,	ORDER SETTING HEARING AND
11	Defendant.	BRIEFING SCHEDULE ON MOTION
12		TO TRANSFER AND VACATING
13		CASE MANAGEMENT CONFERENCE
14		Re: Dkt. Nos. 18, 21
15		
16	The Court has received Defendant's motion to dismiss or to transfer venue and Plaintiff's	
17	request for an extension of time to respond. The Court HEREBY CONTINUES the hearing on the	
18	motion to February 25, 2022 at 9:00 a.m. Plaintiff's opposition to the motion shall be filed no	
19	later than January 28, 2022. Defendant's reply shall be filed no later than February 4, 2022. The	
20	case management conference set for February 4, 2022 is HEREBY VACATED and shall be reset,	
21	if necessary, by the order on the outstanding motion.	
22	IT IS SO ORDERED.	
23	Dated: January 10, 2022	
24		
25		JEFFREY S. WHITE
26		United States District Judge

1 response was due prejudiced plaintiff. Plaintiff filed his response to Defendants original  
2 Motion to Dismiss on Jan. 28, 2022 at 11:49 PM PST which is contained in ECF 27.

Notice of Electronic Filing

The following transaction was entered on 1/28/2022 at 11:49 PM PST and filed on 1/28/2022

Case Name: Liu v. TNC US Holdings

Case Number: [4:21-cv-07313-JSW](#)

Filer: Frank Liu

Document Number: [27](#)

Docket Text:

OPPOSITION/RESPONSE (re [25] MOTION for Leave to File Excess Pages ) PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS OR TRANSFER VENUE filed by Frank Liu. (Attachments: # (1) Exhibit EXHIBITS AGAINST MTD, # (2) Declaration, # (3) Proposed Order)(Liu, Frank) (Filed on 1/28/2022)

The following transaction was entered on 1/29/2022 at 0:00 AM PST and filed on 1/28/2022

Case Name: Liu v. TNC US Holdings

Case Number: [4:21-cv-07313-JSW](#)

Filer: Frank Liu

Document Number: [28](#)

Docket Text:

OPPOSITION/RESPONSE (re [25] MOTION for Leave to File Excess Pages ) forgot to add title page for my opposition to motion to dismiss or transfer venue so adding it now on its own. this is title page filed by Frank Liu. (Liu, Frank) (Filed on 1/28/2022)

4 Plaintiff was so rushed to get it in on time before midnight that he forgot to add a title page.  
5 So, he filed a title page in ECF 28 minutes later on Jan 29, 2022.

6 The Court found that Defendants' broke court procedure in filing their motion to  
7 dismiss (ECF 18) and then their First Amended Motion to Dismiss (ECF 24) because  
8 Defendants asked the Court to consider both motions at the same time.

9 Because Defendants broke  
10 the rules, the Court struck  
11 Defendants' First Amended Motion  
12 to Dismiss as explained in the  
13 Court Order in ECF 31.

14 On February 3, 2022,  
15 Defendants filed their Second  
16 Amended Motion to Dismiss based  
17 on improper venue and lack of  
18 personal jurisdiction.

19 To sum up, **Defendants got**  
20 **to file three (3) different motion to dismisses.** Their original MTD was on Jan 4, 2022.  
21 Their first amended MTD was on Jan 27, 2022 (just one day before Plaintiff's opposition

FRANK LIU,  
Plaintiff,  
v.  
TNC US HOLDINGS,  
Defendant.

Case No. [21-cv-07313-JSW](#)

**ORDER RE REQUEST FOR CLARIFICATION**

Re: Dkt. No. 31

On January 27, 2022, Defendant filed an amended motion to dismiss for lack of personal jurisdiction or, in the alternative, to transfer venue. (Dkt. No. 24.) On January 28, 2022, the Court issued an order explaining that the amended motion replaced the earlier-filed motion in its entirety and stated that the earlier motion would not be considered. (Dkt. No. 30.) The Court set the new amended motion to be heard on March 4, 2022, at 9:00 a.m.

On January 31, 2022, the Court received a motion for clarification in which Defendant explained that they intended to incorporate by reference their earlier motion and have the Court address both the original motion and the amended motion together. This is not proper procedure. Accordingly, the Court STRIKES Defendant's amended motion to dismiss for lack of personal jurisdiction or, in the alternative, to transfer venue and VACATES the hearing date of March 4, 2022.

response was due). Plaintiff filed his opposition anyway on Jan. 28, 2022 (ECF 27). The Court struck Defendants' first amended MTD. Defendants filed their Second Amended MTD on Feb 3, 2022. Plaintiff filed his response to Defendants' Second Amended Motion to Dismiss, and the ultimate outcome was Plaintiff's lawsuit was dismissed for lack of personal jurisdiction. Defendants had 3 cracks at the apple because they filed 3 different motion to dismiss. Plaintiff never amended his complaint because he was fighting Defendants' argument based on venue, then based on both venue and lack of personal jurisdiction. Plaintiff was saving doing an amendment for later.

Ultimately, Judge White dismissed the lawsuit **without prejudice** and suggested that the lawsuit be refiled in SDNY based on page 6 of ECF 55:

23	Court finds that it lacks jurisdiction over the Defendant. Accordingly, the Court must dismiss this
24	action. However, the Court DISMISSES this action without prejudice to Plaintiff filing suit in
25	another venue. The Court suggests that the Southern District of New York or the District of New
26	Jersey may be the proper venue for Plaintiff's claims regarding his termination of employment.

Plaintiff had originally planned to appeal the dismissal to the Ninth Circuit because he believed ND. California should have transferred Liu's lawsuit, instead of dismissing it without prejudice. Defendants through Cardelle Spangler used estoppel and promissory estoppel to prevent Liu from filing an appeal to the Ninth Circuit.

### **More About Defendants' Estoppel and Promissory Estoppel**

Plaintiff saw through Defendants' actions too late to appeal to the Ninth Circuit. However, Plaintiff was able to refile his lawsuit in Southern District of New York just barely within 30 days since the dismissal without prejudice. On October 22, 2022 while homeless and living in his car, Plaintiff quickly worked on and submitted his lawsuit to the Southern District of New York's [Temporary\\_Pro\\_Se\\_Filing@nysd.uscourts.gov](mailto:Temporary_Pro_Se_Filing@nysd.uscourts.gov) as he didn't have much time to do it due to realizing on October 22, 2022 that Defendants' actions were stringing Plaintiff along so he would miss his appeal deadline and also to prevent him from refiling. SDNY's [Temporary\\_Pro\\_Se\\_Filing@nysd.uscourts.gov](mailto:Temporary_Pro_Se_Filing@nysd.uscourts.gov) was the saving factor because if Liu did not discovery he could email the lawsuit, it would have been nearly

1 impossible for Liu to have been able to refile his lawsuit within 30 days because he only  
2 realized Spangler was playing Liu and doing things to estop and promissory estop Liu on  
3 October 22, 2022 (which was a Saturday).

4 Liu's lawsuit was terminated in the Northern District of California on September 23,  
5 2022. Liu's lawsuit was refiled in the Southern District of New York on October 22, 2022.  
6 So this was barely within 30 days.

7

### 8 **Defendants Waited too Long to Contest Statute of Limitations**

9 Defendants never contested statute of limitations for Liu's Northern California lawsuit  
10 because Liu's lawsuit was filed within 90 days of his right to sue letter. It was a difficult  
11 process because Liu had never filed a lawsuit before, and he was out of the country when  
12 the EEOC issued the right to sue letter electronically. Liu returned to the USA to file his  
13 lawsuit.

14 Furthermore, after the lawsuit was dismissed for lack of personal jurisdiction, Liu  
15 refiled his lawsuit in SDNY as Judge White had suggested. Defendants filed their motion to  
16 dismiss (ECF 28), but Liu's Amended Complaint (ECF 44) moots Defendants' ECF 28 as if  
17 Defendants had never filed it. For some reason, Defendants waited over 7 months to file  
18 their Motion to Dismiss Liu's Amended Complaint which Plaintiff believes is too long.

19 Plaintiff believes Defendants waived their right to contest Title VII's statute of  
20 limitations because they waited 7 months to do so. There was no reason why Defendants  
21 waited so long.

22 The Court Should Not Consider Defendants Untimely Arguments. Although the  
23 Court allowed Defendants to file a motion to dismiss over 7 months after Plaintiff's  
24 Amended Complaint, the rule of untimely defenses not raised in a timely fashion should  
25 apply. Plaintiff did not have 7 months to work on his opposition to Defendants' motion to  
26 dismiss. Plaintiff disagrees with how Defendants had over 7 months to do their motion to  
27 dismiss Plaintiff's Amended Complaint. Just because the Court allows Defendants to file a

1 motion to dismiss doesn't mean their arguments in their motion to dismiss aren't already  
2 waived due to untimeliness.

3

#### 4 **Plaintiff's Original Lawsuit Had Several Claims**

5 Plaintiff's Original Lawsuit, the refilled SDNY lawsuit had numerous claims.  
6 Defendants keep on gaslighting that it was single cause of action or something like that.  
7 That is false. The Court should compare Liu's ND California lawsuit to the refiled lawsuit  
8 in SDNY. Liu's Amended Complaint just expands on what happened and added on that  
9 Defendants violated NY GOL 5-336. The Court should do due diligence to see that Liu's  
10 original lawsuit was not "single cause of action" like Defendants allege. Liu's ND  
11 California lawsuit was the first lawsuit Liu ever filed. A pro se may not label things like  
12 lawyers label things. It had several elements and claims.

13

#### 14 **Other Arguments Against Defendants' Allegation Liu's Lawsuit is Time Barred**

15 There are numerous factors that show this Complaint is filed within statute of  
16 limitations and is not time barred.

17 NYSHR Law and Governor Cuomo's COVID-19 Executive Orders tolling Statute of  
18 Limitations. Under the New York City Human Rights Law, employees have three years to  
19 file a claim under the Human Rights Law. During the COVID-19 pandemic, former  
20 Governor Cuomo signed an executive order tolling the statute of limitations for 228 days  
21 under Executive Order 202.8. The decision in *McLaughlin v. 16 Snowlift, Inc.*, 2021-  
22 05769, \_\_\_ A.D.3d \_\_\_ [2d Dep't Mar. 8, 2023], held that the Second Department  
23 unequivocally stated that its decision in *Brash v. Richards* conclusively "held that the  
24 executive orders 'constitute a toll' of the filing deadlines applicable to litigation in New  
25 York Courts." Statute of limitations was once again tolled again in former Governor  
26 Cuomos's Executive Order 202.67 which provided even further tolling. Three years and  
27 228 days equates to 1323 days. This doesn't even factor in Executive Order 202.67 which  
28 added more tolling. From when Liu was terminated to from when the original Complaint

1 was first submitted to Southern District of New York is less than 1323 days therefore Liu  
 2 can proceed under New York State Human Rights Law and the SDNY federal court is a  
 3 proper venue. Liu did work for Nielsen in the New York in 2019 and before then as well.  
 4 Nielsen assigned Liu a number of homes to recruit in New York City.

5 The 90 day right to sue letter appears to have been issued on June 25, 2021. I was out  
 6 of the Country until September of 2021. I left the Country in June of 2019. I returned back  
 7 to the US in September of 2021. I am sure people remember the Covid pandemic. Before I  
 8 returned to the USA, I needed to get a covid-19 test as that was a requirement to enter the  
 9 USA in September of 2021. Covid19 was a real thing that impacted a lot of people.

10 There is authority in this circuit for the proposition that a plaintiff may defeat a time  
 11 bar to a Title VII civil suit by asserting subsequent identifiable acts of discrimination related  
 12 to a time barred incident. *Egelston v. State University College at Geneseo*, supra, at 755;  
 13 *Noble v. University of Rochester*, 535 F.2d 756, 757-58 (2d Cir. 1976); *Weise v. Syracuse*  
 14 *University*, 522 F.2d 397, 410 n. 20 (2d Cir. 1975). Tolling might be appropriate where the  
 15 defendant has actively misled the plaintiff respecting the cause of action, or where the  
 16 plaintiff has in some extraordinary way been prevented from asserting his rights, or has  
 17 raised the precise statutory claim in issue but has mistakenly done so in the wrong forum.  
 18 See *Burnett v. N.Y. Central R.R. Co.*, 380 U.S. 424, 429, 85 S.Ct. 1050, 13 L.Ed.2d 941  
 19 (1965). See also *Johnson v. Railway Express Agency*, 421 U.S. 454, 468 n. 14, 95 S.Ct.

20 However, the 90-day limit on filing suit after receipt of the right to sue letter is  
 21 subject to equitable tolling in appropriate circumstances. For equitable tolling to apply, a  
 22 plaintiff must show (1) excusable ignorance of or non-compliance with the limitations  
 23 period, with no prejudice to defendant, or (2) affirmative misconduct of defendant that  
 24 lulled the plaintiff into inaction. *Payne v. Cook County Hospital*, 719 F. Supp. 730, 732  
 25 (N.D. Ill., 1989).

## 26 DEFENDANTS DIRTY TACTICS WITH EEOC

27 Liu was overseas, and EEOC needed to do a phone interview to be able to file an  
 28 EEOC complaint. Liu tried several times to get a phone interview done but due to being in

1 China, he needed a working VPN to use Google Voice. Liu tried to get New York EEOC  
 2 interview but his phone wouldn't ring. It is hard to schedule phone interviews as it is weeks  
 3 out, and Liu ended up doing it for the EEOC Tampa Field Office under the impression they  
 4 would transfer it to New York Field Office once it was officially filed. However, Cathy  
 5 Beveridge misled the Tampa Field Office to thinking that Liu's employment records were  
 6 stored in Oldsmar, Florida when they weren't so the Tampa EEOC refused to transfer Liu's  
 7 EEOC case to the New York field office. It was only found out after Liu filed his lawsuit in  
 8 the Northern District of California that the records were stored in the Netherlands as per  
 9 Antia Pancholi's affidavit. Had Cathy Beveridge (who was Nielsen's lawyer during the  
 10 EEOC process) not have lied to the EEOC, then the EEOC would have transferred Liu's  
 11 EEOC case to the New York field office, where the claims would have been cross-filed with  
 12 the New York State Department of Human Rights. Due to Nielsen's lies and deception,  
 13 Plaintiff argues his claims should be allowed to proceed under NYSHR law. Plaintiff did  
 14 work for Nielsen in NY where discrimination, retaliation and other illegal conduct by  
 15 Nielsen took place.

### 16 17 **Plaintiff's EEOC Charge is Multiple Claims**

18 Here is a screenshot of Liu's initial EEOC filing which shows the check boxes.

DISCRIMINATION BASED ON (Check appropriate box(es).)

<input checked="" type="checkbox"/> RACE	<input type="checkbox"/> COLOR	<input type="checkbox"/> SEX	<input type="checkbox"/> RELIGION	<input type="checkbox"/> NATIONAL ORIGIN
<input checked="" type="checkbox"/> RETALIATION	<input type="checkbox"/> AGE	<input checked="" type="checkbox"/> DISABILITY	<input type="checkbox"/> GENETIC INFORMATION	
<input type="checkbox"/> OTHER (Specify)				

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

20 Furthermore, Liu did supplement the EEOC complaint with over 100 pages of  
 21 documents and did allege the other things contained in Liu's lawsuit with the exception of  
 22 Defendants violating NY GOL 5-336 because that happened after Liu's lawsuit was  
 23 dismissed in the Northern District of California.

Furthermore, see **Docket 67-1 “Exhibit A”** where Cathy Beveridge submitted a rebuttal paper to the EEOC. It is clear that Liu’s EEOC complaint was more than about discrimination.

### ORAL ARGUMENTS REQUESTED

Due to the important nature of Defendants’ motion to dismiss, Plaintiff does request telephone or zoom hearing for oral arguments. The Court can set the date and time.

### CONCLUSION

Plaintiff believes this Court needs to consider 1) equitable tolling, 2) estoppel and promissory estoppel 3) COVID-19 pandemic, 4) Liu’s diligence of getting justice and other matters. Furthermore, Plaintiff asks if the Court rules against Plaintiff’s arguments, that the lawsuit be transferred to District of Connecticut because venue is more proper there due to Title VII’s special venue provisions and because it would save Plaintiff’s lawsuit due to Connecticut’s savings law. Defendants lied to the EEOC to prevent Liu from having his EEOC complaint from being transferred to the New York Field Office where it would have been cross-filed with the NY State Division of Human Rights. Plaintiff requests oral arguments. Plaintiff was rushed in finishing this brief and would have liked to have more time. Furthermore, Plaintiff was physically attacked last week as per Dkt. 74.

Respectfully submitted,



Dated 3/29/2024

Frank Liu

Pro Se Plaintiff